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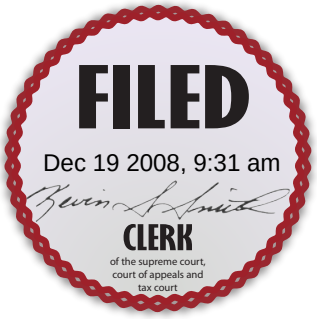

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IN THE
COURT OF APPEALS OF INDIANA

BOOKER SEWELL, III,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 02A03-0806-CR-274
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Robert J. Schmoll, Magistrate
Cause Nol. 02D04-0206-FB-122

December 19, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Booker Sewell, III, appeals the revocation of his probation, arguing that there is insufficient evidence supporting the revocation. Finding no error, we affirm.

FACTS

On September 17, 2002, a jury found Sewell guilty of class B felony dealing in cocaine and class D felony resisting law enforcement. On October 15, 2002, the trial court sentenced Sewell to fifteen years imprisonment, with five years suspended and two years of probation, for class B felony dealing in cocaine, and to three years imprisonment for class D felony resisting law enforcement, to be served concurrently. Sewell appealed his convictions, and on August 8, 2003, a panel of this court affirmed. Sewell v. State, No. 02A04-0212-CR-616 (Ind. Ct. App. June 27, 2003).

On November 2, 2006, the trial court ordered that Sewell be assigned to the Community Transition Program (CTP), which is the first part of a yearlong Re-Entry Program. After a defendant completes the CTP, he is placed on probation or parole. Sewell completed the CTP and was placed on probation as of March 19, 2007. As a condition of probation, Sewell was required to complete the remainder of the Re-Entry Program successfully.

On October 4 and October 12, 2007, Sewell tested positive for marijuana. On October 16, 2007, police officers were prevented from conducting a full search of Sewell's residence. Additionally, Sewell twice failed to turn in his weekly schedule, which violated the terms of the Re-Entry Program. As a result of these circumstances,

Sewell was terminated from the Re-Entry program on October 26, 2007. At that time, the trial court signed an order stating that "Defendant has violated the terms of the Re-Entry Court Program and is referred back to probation forthwith[.]" Appellant's App. p. 13. Sewell did not appeal that order.

On November 2, 2007, the State filed a petition to revoke Sewell's probation, alleging that he had violated the terms of probation by failing to successfully complete the Re-Entry Program. At the January 14, 2008, hearing, Case Manager Sarah Hyde testified over Sewell's objection that the reason he was terminated from the Re-Entry Program was his marijuana use, which was confirmed by the laboratory tests of his urine samples. Following the hearing, the trial court revoked Sewell's probation. Sewell now appeals.

DISCUSSION AND DECISION

As we consider Sewell's argument that there is insufficient evidence supporting the revocation of his probation, we observe that probation is a matter of grace that is left to the trial court's discretion, not a right to which a defendant is entitled. Prewitt v. State, 878 N.E.2d 184, 187 (Ind. 2007). "The trial court determines the conditions of probation and may revoke probation if the conditions are violated." Id. When reviewing the evidence supporting the revocation of probation, we will neither reweigh the evidence nor judge the credibility of witnesses. Braxton v. State, 651 N.E.2d 268, 271 (Ind. 1995). Instead, we will consider the evidence most favorable to the trial court's judgment and will affirm if there is substantial evidence of probative value supporting the trial court's

conclusion that a probationer has violated any condition of probation. Id. Evidence of a single probation violation is sufficient to sustain the revocation of probation. Smith v. State, 727 N.E.2d 763, 766 (Ind. Ct. App. 2000).

Sewell's primary argument on appeal is that the trial court erred by admitting Case Manager Hyde's testimony about the results of the laboratory tests of Sewell's urine. The rules of evidence—including the rule limiting the admission of hearsay evidence—do not apply to probation revocation hearings. Ind. Evidence Rule 101(c). Instead, our Supreme Court has explained that hearsay evidence may be admitted at a revocation hearing if the trial court determines that the evidence possesses substantial guarantees of trustworthiness. Reyes v. State, 868 N.E.2d 438, 441 (Ind. 2007). Sewell argues that Hyde's testimony did not possess substantial guarantees of trustworthiness.

We need not reach that issue, however, inasmuch as Hyde's testimony about the lab results was not hearsay because it was not offered for the truth of the matter asserted. Instead, Hyde was explaining to the trial court why Sewell had been terminated from the Re-Entry Program. In other words, at issue in the revocation hearing was whether Sewell had been terminated from the Re-Entry Program, thereby violating a condition of probation, not whether he had properly been terminated from that program. Had Sewell wished to contest his termination from that program, the proper way to raise the issue would have been to appeal from the trial court's October 26, 2007, order finding that he had violated the terms of the Re-Entry Program and referring him back to probation. He did not do so, however, and may not now complain that his termination from that

program was improper. Moreover, Sewell does not challenge the other reasons for his termination from the Re-Entry Program. Inasmuch as it is undisputed that a condition of Sewell's probation was successful completion of the Re-Entry Program and that Sewell was terminated from that program, the trial court properly concluded that Sewell violated a condition of probation and revoked his probation.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.